

A. G. Contract No. KR93 1373TRN
ECS File: JPA 93-92
Project: RRP-811-2(1)P
TRACS: 8112 GH GGH SR068 01C
Section: Twentieth Street @ AERR
AAR/DOT No. 742-239-L

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE TOWN OF THATCHER

THIS AGREEMENT is entered into 3 August, 1993, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF THATCHER, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

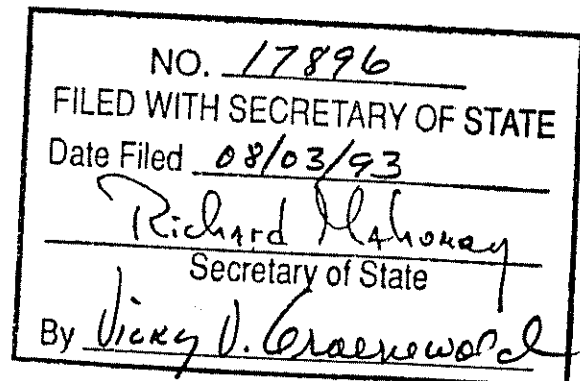
I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 and 28-112 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, ordained to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Town.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.

4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.



5. Such project within the boundary of the Town has been selected by the Town; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the Town by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows: Furnish and Install Flashing Lights and Automatic Gates.

Preliminary and Construction Engineering	\$ 3,000.00
Furnish and Install Cantilever, Flashing Lights and Automatic Gates	\$ 103,418.00
Total Protection Work	\$ 106,418.00
Furnish and Install Rubber Grade Crossing	\$ 77,746.00
Approach Roadway Work (curb by Town forces)	\$ 978.00
Total Project	\$ 185,142.00
Federal Aid Funds @ 90% of \$185,142.00	\$ 166,628.00
AZ Corp. Comm. Funds @ 10% of \$106,418.00	\$ 10,642.00
Town of Thatcher funds @ 10% of \$78,724.00	\$ 7,872.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the Town's deposit unless and until so authorized in writing by the Town.

2. The Town shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

3. The Town shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom.

4. The Town shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the Town shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the Town.

5. Upon completion of construction, the Town shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The Town shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the Town shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the Town and that the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees

from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the Town, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the Town agrees to furnish and provide the State with Town funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Room 222E, Mail Drop 616E
Phoenix, AZ 85007

Town of Thatcher
Town Manager
1130 College Avenue
Thatcher, AZ 85552

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

TOWN OF THATCHER

STATE OF ARIZONA

Department of Transportation

By _____
LAWRENCE INNES
Mayor

By *Robert P. Mickelson*
ROBERT P. MICKELSON, P.E.
Deputy State Engineer

ATTEST:


By *Will Wright*
WILL WRIGHT
Town Clerk

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RESOLUTION

BE IT RESOLVED on this 23rd day of June 1993, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the Town of Thatcher for the purpose of defining responsibilities for the design, construction and maintenance of improvements to Twentieth Street at the Arizona Eastern Railroad Crossing.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer for approval and execution.


for LARRY S. BONINE
Director

Councilman Grant made a motion to table the issue until they had further information. Councilman Morris seconded the motion. The vote was 6-0.

MOTION ADOPTED

- C. GVEDF/Chamber Report - Mayor Innes said GVEDF would not request any money for the budget because they are basically inactive and had moved their business office back to the college. The Chamber would be doing some of what GVEDF had done in the past.
- D. RC&D report - Councilman Grant said he had really enjoyed the June 4th meeting up at Columbine, which Will and Council Howard had attended with him. He said they had a nice program and steak dinner. They had a tour of the telescopes and then conducted their normal business meeting.
- E. SEAGO report - Councilman Rivera attended the meeting on May 22 and reported that Carol Vaughn was the acting Chairman in Gov Aker's place. They were working on a pamphlet to distribute to other cities and states to draw industry to the 14 communities associated with SEAGO. They had also passed a couple of Resolutions, for the Solomon bridge and also a resolution and plaque to show appreciation for Gov Aker.
- F. Review agreements with State for railroad crossing improvements on Eighth Street and 20th Avenue, authorizing the State (ADOT) to act as an agent for the Town.

Will said there was lots of red tape involved and although he had hoped it would be completed this summer, it would take 90 days for Mr. Hammond to get his paperwork done and then another 90 days to go out to bid, so it would be a long process.

Vice-Mayor Matthews made a motion to approve authorizing the State (ADOT) to act as an agent for the Town, with Councilman Morris seconding. The vote was 6-0.

MOTION ADOPTED

A motion was made by Vice-Mayor Matthews to approve the agreements with the State for the railroad crossing with Councilman Morris seconding. The vote was 6-0.

MOTION ADOPTED

- G. Review request from Safford for \$12,000 for golf course. The Council discussed the issue and agreed they would do in-kind requests for the City of Safford's golf course. Town attorney Mark Bryce questioned the legality of raising the fees more to other Towns and not to Safford. The City of Safford indicated


A motion was made by Vice-Mayor Matthews, to adjourn, seconded by Councilman Morris. The vote was 6-0. Time 10:45 pm.

MOTION ADOPTED

ATTEST:



Karen Mack, Deputy Clerk

APPROVED:


Larry Innes, Mayor

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular/special meeting of the Town Council of the Town of Thatcher held on the 21st day of June, 1993. I further certify that the meeting was duly called and held and that a quorum was present.



Deputy Town Clerk, Karen Mack

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APPROVAL OF THE THATCHER TOWN ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the TOWN OF THATCHER and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this 21 day of June, 1993.

A handwritten signature in dark ink, appearing to read "T. A. [unclear]", is written over a horizontal line.

Town Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A. G. Contract No. KR93-1373-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 27th day of July, 1993.

GRANT WOODS
Attorney General

A handwritten signature in cursive script, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH
Assistant Attorney General
Transportation Section